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September 19, 1985

Roy Schrock
Project Officer
United States Environmental
Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

PFE

Re: Comments on Draft RI/FS for Maryland, Sand
Gravel and Stone Superfund Site

Dear Mr. Schrock.

Niles, Barton & Wilmer is pleased to present on behalf of Maryland Sand, Gravel and Stone, Inc., the following preliminary comments on the draft Remedial Investigation and Feasibility Study (RI/FS) recently forwarded by the Environmental Protection Agency (EPA) to Maryland Sand. Our comments will also address Remedial Alternative C-2, the "Preferred Alternative" added to the RI/FS on August 13, 1985.

At the outset we would like to register our protest against the unfair manner in which the draft RI/FS review is being conducted. The draft RI/FS is almost 3 inches thick, contains over 800 tables and 45 figures, several hundred pages of text and a 200 page technical appendix. While it took EPA contractors several years to compile the report, Maryland Sand has only been given a few short weeks to review it. Moreover, on August 13, 1985, EPA added a new section to the report,

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Remedial Action Alternative C-2. This has become known as the "Preferred Alternative" and according to news accounts and informal discussions with EPA, even though the formal review process has not even been begun, both EPA and the State of Maryland have already decided to move ahead, pending approval of funding, with the implementation of this \$9,000,000 partial remedial action.

It is both unfair and unreasonable for EPA to expect a small company like Maryland Sand or the twenty-four other Potentially Responsible Parties, over twenty of which were not designated as such until early August, to conduct by early September a thorough review of the massive and highly technical data contained in the draft RI/FS.

Furthermore, the draft RI/FS itself clearly indicates that insufficient data now exists to define the nature and extent of the threat posed by hazardous wastes found at the site. The draft RI/FS contains over a dozen references which state that a true picture of the nature and extent of the problem will not be available until the all important Phase II Remedial Investigation has been completed. It would be folly for EPA to select a remedial action when subsequent data not yet available may indicate that the action selected is inappropriate. Given the extremely limited funds available for clean-up activities such precipitous action should not be taken except where data indicate that the threat to public health and the environment is serious and immediate.

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Additionally, as the report states, "The only ^{ORIGINAL} hazardous _(ROD) wastes, as defined in EP toxicity tests or RCRA Standards are present near Pond PO2". (8-23) These limited findings do not justify rushing ahead with a final Record of Decision (ROD) at this time. As the following comments will show, from an environmental and health stand point, the "Preferred Alternative" is unjustified.

Finally, and most importantly, nowhere in the draft RI/FS is there sufficient evidence to prove that significant levels of contaminants found onsite have migrated offsite nor has it been shown that onsite contamination will pose a significant threat to health or the environment in the near future. Throughout the report, statements are made that threats to offsite receptors, even from potential groundwater contamination, are slight. Local drinking water wells have not been impacted nor is it anticipated that local wells will be impacted in the near future, if ever.

For all of the above reasons we respectfully request that EPA reserve issuance of a final ROD until after Phase II Remedial Investigation is complete. An interim remedial action is not necessary at the present time and may require serious modification or reworking after Phase II data are analyzed.

THE LAW

Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§9601 et seq., all remedial actions must be in conformance with the National Contingency Plan (NCP). Regulations defining the requirements

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of NCP may be found at 40 CFR§300 et seq. Specific remedial action requirements are listed in 40 CFR§300.68.¹ That regulation states:

"Remedial actions taken pursuant to this section (other than responses at Federal facilities) are those responses to releases on the National Priorities List that are consistent with permanent remedy to prevent or mitigate the migration of a release of hazardous substances into the environment." [Emphasis added] 40 CFR§300.68 (a)

Three types of remedial actions are described in the NCP: Initial Remedial Measures, Source Control Remedial Actions, and Offsite Measures. The two types of remedial actions most relevant here are the Initial Remedial Measures and Source Control Remedial Actions.

Initial Remedial Measures may be taken before final selection of an appropriate remedial action "if such measures are determined to be feasible and necessary to limit exposure or threat of exposure to a significant health or environmental hazard and if such measures are cost-effective." (Emphasis added) (40CFR§300.68 (e) (1)). Factors which must be reviewed to determine whether an Initial Remedial Measure is warranted include:

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Regulations referred to here are those now in effect. Revisions to the NCP proposed on February 12, 1985, while altering §300.68, do not change the overall thrust of its requirements. Indeed the proposed revisions require EPA to go even further in evaluating the potential threat posed by the site. Proposed §300.68 (c) (2) (xiii) requires that EPA evaluate the "Ability of responsible party to implement and maintain the remedy until the threat is permanently abated". EPA has not undertaken such an evaluation.

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1. Actual or direct contact with hazardous waste by nearby population.
2. Absence of an effective drainage control system.
3. Contaminated drinking water at the tap. ^(HCU)
4. Hazardous substances in drums, barrels, tanks, or other bulk storage containers, above the surface posing a serious threat to public health or the environment.
5. Highly contaminated soils largely at or near surface, posing a serious threat to public health or the environment.
6. Serious threat of fire or explosion or other serious threat to public health or the environment.

Source Control Remedial Actions may be appropriate "if a substantial concentration of hazardous substance remain at or near the area where they were originally located and inadequate barriers exist to retard migration of substances into the environment." 40 CFR§300.68 (e) (2). Such measures are not appropriate if substances have migrated or if they are adequately contained. Containment or removal actions may be taken where necessary but only if consistent with a permanent remedy. Source Control actions require the issuance of a ROD.

Criteria for determining when Source Control actions are indicated, include:

1. Extent to which substances pose a danger to public health, welfare, or the environment. To determine whether such a danger exists the agency must consider:
 - (a) Population at risk;
 - (b) Amount or form of substance present;
 - (c) Hazardous properties of the substances;
 - (d) Hydrological factors including soil permeability and proximity to drinking water aquifer;
 - (e) Climate.

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2. Extent to which substances have migrated or are contained by natural or man made barriers.
3. Experiences and approaches used in similar situations by State and Federal agencies.
4. Environmental effects and welfare concerns.

Initial Remedial Measures and Source Control Remedial

Measures must be based on an evaluation of data in the Remedial Investigation (RI) and the Feasibility Study (FS) undertaken at the site. The Remedial Investigation is designed "to determine the nature and extent of the problem," (40 CFR§300.68 (f)) and the Feasibility Study is designed to develop a limited number of alternatives for either source control or offsite clean up measures. 40 CFR §300.68 (g). EPA has published specific guidance documents on how both the RI and FS should be conducted and what those studies should contain. See, Guidance on Remedial Investigations Under CERCLA, Environmental Protection Agency, May 1985; Guidance on Feasibility Studies Under CERCLA, Environmental Protection Agency, April 1985. .

It is clear from the NCP that no Remedial Action can be taken at a site until the RI/FS is complete. EPA does not have authority to take Remedial action based on a "Phase I" RI/FS. There is no provision for such a report. All phases of the RI/FS must be complete before Remedial action can be taken.

In selecting the appropriate remedial alternatives for a given site, EPA must take into consideration the cost-effectiveness of such an action.² The regulations state:

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EPA has proposed changes in the above-cited sections. See 50 Fed. Reg. 5862 et seq. February 12, 1985. Those changes would replace the lowest cost alternative

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(j) The appropriate extent of remedy shall be determined by the lead agency's selection of the remedial alternative which the agency determines is cost-effective (i.e. the lowest cost alternative that is technologically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare, or the environment). [Emphasis added 40 CFR 300.68 (J)]

(k) Section 104(c) (4) of CERCLA requires that the need for protection of public health, welfare and the environment at the facility under consideration be balanced against the amount of money available in the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action. Accordingly, in determining the appropriate extent of remedy for Fund-financed response, the lead agency also must consider the need to respond to other releases with Fund monies.
[Emphasis added 40 CFR 300.68 (K)]

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language with language which explains "the appropriate extent of remedy shall be determined by selection of a cost effective remedial alternative which effectively mitigates or minimizes the threat to and provides adequate protection of public health, welfare, and the environment " See 50

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REVIEW OF DRAFT RI/FS

A review of the draft RI/FS for Maryland Sand, Gravel and Stone as well as the Preferred Alternative, C-2, must be made in the context of the Regulations and guidance documents. To date, without completion of the Phase II program, EPA has failed to meet its burden of proving that either a final Source Control Remedial Action or an Initial Remedial Measure is needed at this time. Insufficient data exists to properly define the threat posed and determine the most cost-effective method for mitigating any potential threat posed by wastes found onsite. Onsite contaminants do not pose a serious hazard to any offsite receptor. There is no evidence that significant amount of waste will migrate offsite in the near future or that even if wastes did so migrate that they would pose a significant threat to human health or the environment.

Initial Remedial Measure

Based on the description in the draft RI/FS that Remedial Alternative C-2 will be an initial action designed to reduce organic and heavy metal concentrations in shallow groundwater aquifer to background values or an acceptable risk "to be specified in the Record of Decision (ROD) for the Phase II RI/FS" (RI/FS at 10-33), this alternative may be defined as an Initial Remedial Action. As such, it must meet the requirements of 40 CFR§300.68 (e) (1). As explained earlier, an Initial Remedial Action is only indicated where the threat to Human Health and the Environment is serious and the action to be taken will be cost-effective balanced with the overall

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financial constraints of the Superfund program. The factors required to be considered in Initial Remedial Action regulations are herein applied to the facts as presented in the draft RI/FS, for this site.

Actual or Direct Contact with Hazardous Waste By Nearby Population.

The Executive Summary of the Draft RI/FS states:

Appreciable exposure via direct contact with onsite waste, surface soils, sediments, and surface waters, or inadvertent contact with contaminants transported off site by surface runoff does not appear to be a likely scenario on the basis of the study information, except for onsite remedial workers and trespassers near or at the sources. (Emphasis added RI/FS at Ex-6)

Absence of an Effective Drainage Control System

The Draft RI/FS states that:

"The potential for Flooding on or in the vicinity of the site is negligible." (5-42)

"The project site contains no natural wetlands." (5-43)

There is no indication in the report that the site lacks an effective drainage system.

Contaminated Drinking Water at the Tap

No contamination of drinking water at the tap has been found.

Drums and other Containers of Hazardous Waste above the Surface Posing Serious Threat

The site contains no drums, barrels, tanks or other bulk storage containers containing hazardous waste above the surface posing a serious threat.

Highly Contaminated Soils Posing a Serious Threat

There are no highly contaminated soils on site which pose a serious threat.

Serious Threat of Fire or Explosion

While the draft RI/FS states that low flash point waste exists on the site and that such waste presents a fire hazard, there is no serious threat of fire or explosion.

Based on the information presently available, site conditions do not meet the criteria established for the approval of an Initial Remedial Measure.

Source Control Remedial Action

If the C-2 alternative is being proposed as a Source Control Remedial Action, EPA must evaluate the need for this alternative in light of the requirements of the National Contingency Plan regulations discussed previously. A review of the requirements in the NCP and the data available clearly indicate that there is no need to undertake a costly cleanup action at this time. The extent and amount of contamination has been inadequately defined while, on the other hand, there is evidence that natural onsite barriers may be retarding and may continue in the future to retard the spread of contaminants. There is no evidence of adverse impacts to offsite receptors nor is there any evidence that such impacts will occur in the near future. EPA must balance the effectiveness of \$9,000,000 investment of fund monies for a partial remedial action with other more pressing needs of the Superfund. Given the paucity of information available on the possible threat

posed, and the countervailing weight of data indicating that no serious threat exists at this time, there is no justification for rushing ahead with a questionable and perhaps inappropriate quick fix.

Extent to Which Substances Pose a Danger

NCP requires that EPA evaluate the extent to which substances found pose a danger to public health, welfare, or the environment. As noted below, the draft RI/FS indicates that at best a minimal danger is posed at the present time.

The Source Containment Regulations require that EPA begin its review of the need for a Source Containment Remedial Action by assessing the current risk posed by the contaminants on site and the future potential threat of exposure to such contaminants.

The report states the following regarding the present risk of exposure to contamination onsite:

"Nearby users of groundwater for drinking purposes. There are approximately 150 housing units within a 1-mile radius of the site, with an estimated population of 570 residents. A non-residential Y.M.C.A. is located directly south of the site. The nearby residents and users of the Y.M.C.A. facility rely on groundwater wells for their water supply. The chemical data for offsite groundwater suggest that it is not currently contaminated by pollutants present on site.

Nearby users of groundwater for domestic purposes other than drinking, such as showering, bathing, food preparation, clothes washing, and lawn or garden watering. The chemical data for offsite groundwater suggest that it is not currently contaminated by pollutants present on site.

Recreational users of surface waters for swimming (dermal exposure) and boating (accidental dermal exposure). The chemical data for offsite surface waters suggest that these waters are not now contaminated by the contaminants present on site.

Humans consuming game animals (fish, small animals) which have been contaminated by ingestion of bioaccumulative contaminants. The limited chemical data on biota samples suggest that bioaccumulation of contaminants in offsite biota does not exist at the present time.

Third-party intruders who come into direct dermal contact with contact with contaminants present at the site.

Onsite remediation workers through inhalation of elevated concentrations of volatile organic contaminants during soil disturbance or by direct dermal contact with contaminated soil and residual wastes.

Aquatic biota and terrestrial fauna and flora that may be stressed. Onsite flora within the Sedge Meadow have been under stress. The limited chemical data and visual observations concerning the well being of offsite aquatic fauna and flora do not indicate such effects." (Emphasis added, RI/FS at 8-25)

The bottom line with respect to current exposure to contaminants is succinctly stated in the Draft RI/FS, " The available data does not indicate nor confirm any instances of significant past or present human exposure." (sic) (Emphasis added) RI/FS 8-25.

Regarding the potential future risk posed by contaminants found on site, the report states:

"Airborne transport of contaminants to onsite or offsite receptors does not appear to be an exposure route of concern under the present conditions at the site, except for onsite remedial workers and trespassers at or near the sources in the drum/container burial areas and near Ponds PO1, PO2, and PO3, and the Sedge Meadow.

Appreciable exposure via direct contact with onsite wastes, surface soils, sediments and surface waters, or inadvertent contact with contaminants transported off site by surface water runoff does not appear to be a likely scenario on the basis of the RI information, except for onsite remedial workers and trespassers near or at the sources.

Ingestion of any of the volatile organic contaminants in the food chain is not considered to be an exposure path of consequence. (Emphasis added) RI/FS 8-52.

The only significant potential threat posed by contaminants on the site comes from potential groundwater contamination. Concern in the Draft RI/FS focuses on the impact of contamination of the shallow ground water flows onsite on the deep groundwater or bedrocks aquifers. Those aquifers are a source of drinking water for a number of local drinking water wells. On this critical point the draft RI/FS is almost totally lacking. It fails to contain an adequate review of this essential matter. As the report notes, a major goal of the yet incomplete Phase II Remedial study is to determine whether the deeper aquifers are even threatened. On-the-other-hand, Groundwater drainage patterns mapped in the draft RI/FS indicate that underground flows which may contain contaminants are generally flowing in a south and western direction. Almost all of the drinking water wells which could be impacted by such contamination are located hundreds of feet north of the site, at a great distance from the furthest extent of shallow groundwater aquifer contamination and in the opposite direction of flow. In other words, almost all the drinking wells of concern are upgradient. Assuming the worst, contaminated shallow groundwater is still well over 500 feet from any drinking water well.⁴

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Clearly the only real threat posed by contaminants onsite will result from any action taken to excavate and remove the materials presently there.

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EPA has suggested that some contamination, at a no health

The velocity of ground water flowing away from the major sources of contamination is, according to the draft RI/FS, extremely slow. As table 4-4-8 demonstrates, (See ^{ORIGINAL} RI/FS at 4-75) in thirty years, the horizontal distance that contaminants are expected to travel from Ponds PO1, PO2 and PO3, the major sites of contamination, is 312 feet, 2 feet, and 305 feet respectfully. At worst, in ten years contaminants may flow 156 feet away from Pond PO1. Consequently, it is highly unlikely that onsite contaminants will impact offsite drinking water wells in the next few years.

Furthermore, information from the draft RI/FS suggests that a natural clay barrier may exist onsite which is presently retarding or may in the future retard the flow of groundwater away from major 'hot spots' toward any potential drinking water source. The report states:

"Test boring and monitoring well logs obtained during the preparation of the RMP report by NUS Corporation reveal that 12 to 19 feet of sand and gravel overlay a stiff, dry clay. The clay layer is approximately 10 to 20 feet thick with surface dips toward the southeast and southwest. The extent of the clay layer is unknown across the site." [Emphasis added, RI/FS at 401]

"Two samples were tested under a constant water pressure that was equivalent to the earth pressure at which the samples were naturally subjected. A clay sample (CH) at a depth interval of 33 to 35 feet (bottom section of the sample) in DMW-03 (Deep Water Monitoring well) exhibited a low hydraulic permeability of less than 1×10^{-8} cm/sec, as anticipated. This clay layer or lens is virtually impermeable. [Emphasis added, RI/FS at 4-9]

risk level may have reached one residential well on the boarder of the site. The information on the draft RI/FS does not support a conclusion that the small amount of 1,1,1-Tri-chloroethane found in the well came from the site.

"Borehole SMW-10 extended to a total depth of 80.5 feet and penetrated two clay layers at intervals of 29.0-34.0 and 44.0-49.0 feet respectively". [Emphasis added, RI/FS at 4-23]

The depths of the first shallow clay layer detected by the shallow boreholes generally ranged from 14 to 34 feet from existing grade". [RI/FS at 4-23] (Rev)

"The presence of the clay ridge and valley was confirmed by findings from the geophysical studies and groundwater investigations discussed in Sections 4.3 and 4.4 respectively". [Emphasis added, RI/FS at 4-23]

Data from the deep and bedrock boreholes indicated the following:

The first clay strata resided in medium sand or silt matrices at depths of 9-12, 21-57, 11-19, 5-10, and 14-30 feet in DMW-02, DMM-03, DMW-06, BMW-07, and SMW-10, respectively.

Third clay strata were noted at depths of about 90-95 feet by examining data collected from DMW-06 and DMW-07/BMW-07. The clay in these strata was very stiff, hard, and highly plastic. [Emphasis added, RI/FS at 4-25]

The combination of the slow shallow groundwater flow, clay layers, upgradient position of drinking water wells, and the uncertainty that high enough levels of contaminants will reach any drinking water wells in the next few years, leads to the conclusion that, at the present time, the risk of hazardous waste exposure to the local population is close to zero.

Moreover, a review of the draft RI/FS analysis of the 'contaminants of concern' indicates that even if those contaminants reached drinking water sources in the next decade chronic exposure at relatively high levels would be necessary for a significant risk to be posed. Even if concentrations of contaminants, particularly volatile organics, do reach drinking water wells it is unclear whether levels in those wells will be high enough to constitute a threat.

With regard to threats to the environment, the offsite impact is also expected, at least in the near future, to be minimal. Surface water and sediment contamination migration has not been a problem. No adverse impacts to offsite environmental receptors have been discovered.

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The report states:

No detectable levels of VOC were reported downstream from the ponds and seeps at the Sedge Meadow, Swamp, and Old Sedimentation Pond, suggesting that this surface water contamination has not migrated off site. No detectable levels of semi-volatile organic compounds were reported at the Swamp, indicating that surface water contamination had not migrated beyond the site.

Sediments in the Old Sedimentation Pond downstream from the ponds did not contain any metals above the background levels. This further confirms that metals are confined within the boundaries of the site.

No semi-volatile organic compounds were identified above the detection limits in the Swamp, indicating that these pounds also are contained within the site.

Eight fish samples collected downstream from the site did not show any contamination (through biomagnification or bioaccumulation) of metals, pesticides, and PCBs. Consequently, offsite aquatic biota have probably not been impacted by the site contamination. [Emphasis added, RI/FS at Ex-2 - Ex-3.]

Clearly, the data contained in the draft RI/FS do not, when compared with the criteria in the National Contingency Plan, establish a basis for a massive and costly remedial action at this time.

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Inadequacy of the "Preferred Alternative"

More specifically with regard to Alternative C-2, EPA has not considered other less expensive and appropriate control technologies and has designed an unsupportably oversized and complicated treatment system. EPA must, to comply with the NCP reevaluate the remedial action proposed in C-2.

With regard to appropriate treatment technologies, the draft RI/FS rejects Air Stripping as a possible technology for further review by stating that "A problem associated with air stripping is reduced efficiency from cold weather and ice formation." (RI/FS 9-31). This is not an adequate basis for rejecting any further consideration of this cost effective and proven technology. Cold weather and ice formation will also have an impact on the 'preferred alternative' technology proposed in C-2. EPA should reconsider the use of air stripping, a technology which would be more cost effective than the suggested C-2 treatment system.

The treatment system in the C-2 alternative also includes, at significant expenses, treatment capacity for chromium VI and yet no Chromium VI has been found in any of the samples taken from the site. There are no data to support addition of costly Chromium VI treatment capacity and therefore it should be eliminated.

In the RI/FS, EPA also rejects further consideration of biological treatment because of climatic conditions at the site. We are puzzled by this finding. It is a well known fact that biological treatment system have proven effective in areas

with much more severe climatic conditions. EPA's has a responsibility under the NCP to further evaluate and we believe, utilize this proven and cost effective technology.

Finally, waste isolation, containment and capping, which would be much less costly, are rejected out of hand. This is short sighted. As we have already noted, the RI/FS is pregnant with data suggesting that a low permeability or impermeable clay layer may run beneath the entire site or key parts of the site. The "Phase II" RI will provide a better understanding of the extent of the already discovered Clay layer. It, therefore, is inappropriate for EPA to dismiss any further consideration of isolation, containment and capping strategies until data from Phase II is evaluated.

PHASE II MUST BE COMPLETED BEFORE ACTION IS TAKEN

Throughout the draft RI/FS references are made to significant gaps in information which Phase II is expected to fill. In discussing the 'Preferred Alternative' for example; the Draft RI/FS states, "The full extent of soil contamination and waste excavation work required will be determined in the Phase II RI/FS". (10-3) It is beyond cavil that Phase II is needed to properly define the extent and nature of the problem posed by wastes found at the Maryland Sand, Gravel, and Stone Site.

The Phase II Work Plan notes that the information collected during Phase II will not only define the extent of contamination in the Western excavated areas of the site, but

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it will also provide essential information on the potential for contamination of the unconsolidated deep and bedrock aquifers.

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The Work plan states that:

"Since the residents near the site use deeper aquifers and/or bedrock aquifers as a source for their drinking water supplies, such a follow on investigation (Phase II) should yield information on whether the health and safety of these residents would be threatened in the future through contaminant migration to their water supply aquifer. The information to be collected during the Phase II RI/FS will help in gaining a better understanding of the hydrology and water quality status of the potential contamination sources from the site". (Work plan at p.1)

Those critical data obtained in the Phase II investigation must be analyzed before a final decision on proper remedial action can be made.

Conclusion

EPA has failed to meet its burden under the National Contingency Plan to prove that the "Preferred Alternative" or another other remedial action is either appropriate or necessary at this time. No significant offsite contamination has been discovered. The greatest threat posed by onsite contaminants, the threat to drinking water, is minimal at best and may be found upon further study to be nonexistent. Huge gaps exist in our understanding of the potential threat posed by the site. Those gaps should be closed with the completion of Phase II. EPA has failed to consider proven alternative and less costly remedial technologies and has publically announced support for a costly and questionable remedial alternative, C-2, even before comments have been received and evaluated. EPA's predisposition essentially makes the public comment process a sham.

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Finally, there is no authority under the NCP for EPA to move ahead with a remedial action before an RI/FS is complete. EPA admits that the draft RI/FS is seriously deficient and that an extensive Phase II investigation will be needed.

For all of the reasons above EPA must ^{continue} withhold the final Record of Decision and not move ahead with the Preferred Alternative or any other remedial action at least until the Phase II Remedial Investigation is complete.

Respectfully Submitted,

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